THE TRAVANCORE PARTITION BILL.

(Given notice of by Mr. G. Narayana Aiyar, Member, Sri Chitra State Council.)

Whereas it is expedient to amend the law relating to partition, it is hereby enacted as follows.

1. (1) This Bill may be called the Travancore Partition Bill of 111

Title, Extent, Commencement, and Saving.

(2) It extends to the whole of Travancore.

(3) It shall come into force on.

2. In this Bill, unless there is anything repugnant in the subject or contexts.—(*a*) The term "Dwelling house" embraces not merely the structure or building, but includes also adjacent building etc., and all that is necessary for the convenient occupations of the house. It also includes the land on which the structure of the dwelling house stands. It means not only the house in which members of the undivided family actually live, but also that which belongs to the family and in which other members of the family have a right to live if they so feel inclined to live.

Definitions.

(*b*) The word "family" includes a group of persons related in blood who live in one house under one head or management. It is sufficient if the members of the family are undivided *qua* the dwelling house which they own.

(*c*) The words "undivided family" are not restricted to mean a family joint in status, but includes a family divided in status but undivided *qua* the property in question. It includes every family Hindu, Muhamadan or other community which is undivided *qua* the particular dwelling house.

(*d*) The word "Court" is not confined to the trial Court, but includes also the Appellate Court.

(*e*) The words "shall undertake" means something more than a mere offer to purchase, conveying the sum of an unconditional offer from which the person making it will not be permitted to resile.

3. Whenever in any suit for partition, in which if instituted prior to the commencement of this Bill, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the share-holders therein, or of any other special circumstances, a division of the property connot reasonably or conveniently be made, and that a sale of the property and distribution of

Power of Court to order sale, instead of division in partition suits.

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the proceeds would be more beneficial for all share-holders, the Court may if it thinks fit, on the request of any of such share-holders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

4. (1) If, in any case in which the Court is requested under the last foregoing clause, to direct a sale, any other share-holder applies for leave to buy at a valuation, the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit, and offer to sell the same to such share-holder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more share-holders severally apply for leave to buy as provided in sub-clause (1) the Court shall order a sale of the share or shares to the share-holder who offers to pay the highest price above the valuation made by the Court.

(3) If no such share-holder is willing to buy such share or shares at the price so ascertained, the applicants shall be liable to pay all costs of, or incident to, the applications or application.

Petition suit by transferee of share in dwelling house.

5. (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family, and such transferee sues for partition, the Court shall, if any member of the family, being a share-holder, shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit, and direct the sale of such share, to such share-holder, and may give all necessary and proper directions in that behalf.

(2) If, in any case described in sub-clause (1), two or more members of the family, being such share-holders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-clause (2) of the last foregoing clause.

Representation of parties under disability.

6. In any suit for partition a request for sale may be made or an undertaking or application for leave to buy may be given or made, on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking, or application, unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by share holders.

7. (1) Every sale under Section (2) shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit, and may be varied from time to time.

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(2) on any such sale, any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of the deposit, or as to setting off or accounting for the purchase money, or any part thereof, instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons of whom one is a share-holder in the property, respectively advance the same sum at any bidding at such sale such bidding shall be deemed to be a bidding of the share-holder.

Procedure to be followed in case of sale.

8. Save as hereinbefore provided, when any property is directed to be sold under this Bill, the following procedure shall, as far as practicable, be adopted, namely:—If the property be sold under a decree or order of any Court, such procedure as the High Court may, from time to time, by rules, prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decree.

Orders for sale to be deemed decrees.

9. Any order for sale made by the Court under Clauses 3, 4 or 5 shall be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

10. In any suit for partition, the Court may if it shall think fit make a decree for a partition of part of the property to which the suit relates, and a sale of the reminder under this Bill.

Applications of Bill to pending suits.

11. This Bill shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

OBJECTS AND REASONS FOR THE BILL.

Partition suits generally comprise immovable as well as movable properties. In both sets of properties it so happens that some of the properties involved cannot be conveniently divided, and it would be more beneficial and advantageous to the parties that such properties are sold forthwith without waiting for the final decision of the case, or the subsequent execution of the decree. Even if a request for interim sale be made by some of the parties to prevent loss or deterioration before the final decision, Courts do not now possess sufficient definite powers by the existing Acts to grant such requests. Cases also happen in which the share of a dwelling-house belonging to an undivided family if transferred to a person, who is not a member of that family and whose joint enjoyment may not be agreeable to the other members of that family. Such cases also deserve special consideration. As it stands, in all such cases, parties have to invoke the inherent powers of Courts

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